

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No.: EB-11-SE-056
	)	
Metropolitan Telecommunications	)	NAL/Acct. No.: 201232100015
Holding Company d.b.a. MetTel	)	
	)	FRN: 0009806019

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: December 29, 2011**

**Released: December 29, 2011**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we propose a forfeiture in the amount of forty-eight thousand dollars (\$48,000) against Metropolitan Telecommunications Holding Company d.b.a. MetTel (“Metropolitan”).<sup>1</sup> As detailed herein, we find that Metropolitan apparently willfully and repeatedly violated section 20.19(d)(3)(ii) of the Commission’s rules (“Rules”).<sup>2</sup> We further find that this apparent misconduct continued for the entire 2010 calendar year. Specifically, Metropolitan apparently failed to offer to consumers the required number or percentage of hearing aid-compatible digital wireless handset models that operate on the WCDMA and GSM air interfaces as set forth in the Rules. These hearing aid compatibility requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services.

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.<sup>3</sup> The Commission established technical standards that digital wireless handsets must meet to be considered

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<sup>1</sup> Metropolitan is a Tier III carrier that provides service throughout the continental United States. Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of 2001. See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847-48 ¶¶ 22-23 (2002). Metropolitan offers service over the Global System for Mobile Communications (“GSM”), Wideband Code Division Multiple Access (“WCDMA”), and Code Division Multiple Access (“CDMA”) air interfaces.

<sup>2</sup> 47 C.F.R. § 20.19(d)(3)(ii).

<sup>3</sup> *Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003); Erratum, 18 FCC Rcd 18047 (2003) (“*Hearing Aid Compatibility Order*”); Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, codified at section 710(b)(2)(B) of the Communications Act of 1934, as amended (the “Act”), 47 U.S.C. § 610(b)(2)(B).

compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.<sup>4</sup> Specifically, the Commission adopted a standard for radio frequency interference (the “M3” rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the “T3” rating) to enable inductive coupling with hearing aids operating in telecoil mode.<sup>5</sup>

3. In the 2008 *Hearing Aid Compatibility First Report and Order*, the Commission established several deadlines between 2008 and 2011 by which manufacturers and service providers must offer specified numbers or percentages of digital wireless handset models that are rated as hearing aid-compatible.<sup>6</sup> The number or percentage of digital wireless handset models required to be offered to

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<sup>4</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777 ¶ 56. See also 47 C.F.R. § 20.19(b)(1), (2). The *Hearing Aid Compatibility Order* described the acoustic coupling and the inductive coupling (telecoil) modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

*Hearing Aid Compatibility Order*, 18 FCC Rcd at 16763 ¶ 22.

<sup>5</sup> As subsequently amended, section 20.19(b)(1) provides that, for the period beginning January 1, 2010, a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at a minimum, it meets the M3 rating associated with the technical standard set forth in the standard document “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2007 (June 8, 2007) (“ANSI C63.19-2007”), except that grants of certification issued before January 1, 2010 under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provides that, for the period beginning January 1, 2010, a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard set forth in ANSI C63.19-2007, except that grants of certification issued before January 1, 2010 under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(2).

<sup>6</sup> These handset deployment requirements apply to each air interface over which the service providers offer service. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3419 ¶¶ 35-36 (2008) (stating that the hearing aid-compatible handset deployment requirements apply on a per air interface basis) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008). However, these handset deployment benchmarks do not apply to service providers and manufacturers that meet the *de minimis* exception. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3413 ¶ 204 (2008) (“*Hearing Aid Compatibility First Report and Order*”), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008); 47 C.F.R. § 20.19(e). The *de minimis* exception provides that manufacturers or mobile service providers that offer two or fewer digital wireless handset models per air interface are exempt from the hearing aid compatibility requirements, and manufacturers or service providers that offer three digital wireless handset models per air interface must offer at least one compliant model. 47 C.F.R. § 20.19(e). Effective September 10, 2012, the *de minimis* exception will not be available to manufacturers or mobile service providers that do not meet the definition of a “small entity” beginning two years after their initial offerings. 47 C.F.R. § 20.19(e)(1)(ii); see also *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, 11180-89 ¶¶ 35-59 (2010).

consumers by each deadline depends on the applicable compatibility standard (“M” rating or “T” rating), and the deployment schedule is tailored to the size of the service provider as measured by its number of subscribers. Specifically, between May 15, 2009 and May 14, 2010, non-Tier I service providers were required to ensure that at least nine handset models per digital air interface,<sup>7</sup> or at least 50% of the models offered per digital air interface, met or exceeded the M3 rating,<sup>8</sup> and that at least five handset models per digital air interface, or at least one-third of the models offered per digital air interface, met or exceeded the T3 rating.<sup>9</sup> Beginning May 15, 2010, non-Tier I service providers were required to offer to consumers at least ten handset models per digital air interface, or at least 50% of the models offered per digital air interface, that met or exceeded the M3 rating.<sup>10</sup> Similarly, between May 15, 2010 and May 14, 2011, non-Tier I service providers were required to offer at least seven handset models per digital air interface, or at least one-third of the models offered per digital air interface, that met or exceeded the T3 rating.<sup>11</sup>

4. On January 18, 2011, Metropolitan submitted a hearing aid compatibility status report covering January 1, 2010 to December 31, 2010,<sup>12</sup> which it subsequently amended on February 3, 2011.<sup>13</sup> Metropolitan identified each handset model offered to consumers, and specified the model’s FCC Identification (“FCC ID”) as well as the hearing aid compatibility rating, if any. After a careful review of Metropolitan’s submission, the Wireless Telecommunications Bureau referred this matter to the Enforcement Bureau (“Bureau”) for investigation. As part of its investigation, the Bureau consulted the FCC Office of Engineering and Technology (“OET”) Equipment Authorization System to independently confirm the hearing aid compatibility rating of each handset model as established in the grant of equipment authorization issued by the Commission for that handset.<sup>14</sup> The Bureau also reviewed each handset model’s equipment authorization and other manufacturer-reported information in the OET database to determine the air interface(s) on which the handset model operates.<sup>15</sup> Taking into account this manufacturer-reported information, including information that would be more favorable to Metropolitan than the information in its own submission,<sup>16</sup> we conclude that Metropolitan apparently failed to offer, for

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<sup>7</sup> The term “air interface” refers to the technical protocol that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider’s base stations. Currently, the leading air interfaces include CDMA, GSM, Wideband Code Division Multiple Access (“WCDMA”) a.k.a. Universal Mobile Telecommunications System (“UMTS”), and Integrated Digital Enhanced Network (“iDEN”).

<sup>8</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 35; 47 C.F.R. § 20.19(c)(3)(ii).

<sup>9</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii).

<sup>10</sup> See *supra* note 8.

<sup>11</sup> See *supra* note 9.

<sup>12</sup> See Metropolitan Telecommunications Holding Company d.b.a. MetTel, *Hearing Aid Compatibility Status Report* (filed Jan. 18, 2011), available at [http://wireless.fcc.gov/hac\\_documents/110210/5949966\\_304.PDF](http://wireless.fcc.gov/hac_documents/110210/5949966_304.PDF).

<sup>13</sup> See Metropolitan Telecommunications Holding Company d.b.a. MetTel, *Hearing Aid Compatibility Status Report* (filed Feb. 3, 2011), available at [http://wireless.fcc.gov/hac\\_documents/110210/5949401\\_298.pdf](http://wireless.fcc.gov/hac_documents/110210/5949401_298.pdf) (“Amended 2010 Report”).

<sup>14</sup> The FCC Office of Engineering and Technology Equipment Authorization System is the electronic database of all equipment certified under FCC authority. This database identifies the hearing aid compatibility rating of each device by FCC ID, as reported by the handset manufacturer in test reports submitted to the Commission at the time of an equipment authorization or of any modifications to such authorization. See <http://transition.fcc.gov/oet/ea/fccid/>.

<sup>15</sup> See *id.*

<sup>16</sup> We note that our review revealed apparent inconsistencies between the hearing aid compatibility ratings for certain models listed in the Amended 2010 Report and the ratings specified in the Commission’s equipment authorizations for these models. Specifically, Metropolitan’s Amended 2010 Report indicates that the Samsung

the entire 2010 calendar year, the required number or percentage of handset models with a minimum T3 rating that operate on the WCDMA and GSM air interfaces.<sup>17</sup>

### III. DISCUSSION

#### A. Failure to Comply with Hearing Aid-Compatible Handset Deployment Requirements

5. We find that Metropolitan apparently failed to offer to consumers the required number or percentage of hearing aid-compatible handset models with a minimum T3 rating that operate on the WCDMA and GSM air interfaces. As noted above, the Commission has imposed varying benchmarks for the deployment of hearing aid-compatible handsets. Between January 1 and December 31, 2010, Metropolitan was required to offer at least *two* handset models with a minimum T3 rating that operate on the WCDMA air interface<sup>18</sup>—fewer than half the number of handset models it made available to consumers without hearing loss.<sup>19</sup> As set forth in greater detail in the Appendix, Metropolitan apparently failed to meet this standard, repeatedly falling short by one handset model.<sup>20</sup> Accordingly, we find that

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Omnia model (FCC ID A3LSGHI900) is rated M4 when in fact Commission records show that the model is not rated for hearing aid compatibility. Our review also revealed apparent inconsistencies between the information submitted by Metropolitan in its Amended 2010 Report and the OET database concerning the air interface(s) over which certain handset models operated. Specifically, Metropolitan's 2010 Report indicated that the Research in Motion 9700 (L6ARCM70UW) operates on the CDMA air interface when the equipment authorization for the handset model indicates that the model operates on the GSM and WCDMA air interfaces; that the Samsung Convoy U640 (A3LSCHU640) operates on the CDMA and WCDMA air interfaces when the equipment authorization for the handset model indicates that the model only operates on the CDMA air interface; and that the Samsung Omnia (A3LSGHI900) operates on the CDMA air interface when the equipment authorization for the handset model indicates that the model operates on the GSM and WCDMA air interfaces. Finally, although not relevant to our findings herein, this review revealed additional apparent inconsistencies between the hearing aid compatibility ratings for certain handset models listed in Metropolitan's Amended 2010 Report and the ratings specified in the Commission's equipment authorizations for these models. Specifically, Metropolitan's Amended 2010 Report indicates that the Huawei Incredible model (FCC ID NM8PB31200) is rated M3/T4 when Commission records show that the model is rated M4/T3; that the Motorola Devour A555 model (FCC ID IHDP56KW1) is rated M4/T3 when Commission records show that the model is rated M4/T4; and that the Motion Blackberry 8330 model (FCC ID L6ARBU20CW) is rated M3/T3 when Commission records show that the model is rated M4/T4.

<sup>17</sup> See *supra* notes 14 and 15 and accompanying text.

<sup>18</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3419 ¶ 36; 47 C.F.R. § 20.19(d)(3)(ii) (requiring non-Tier I digital wireless service providers to ensure that between May 15, 2009 and May 14, 2010, either at least one-third of the handset models offered, or at least five handset models, met or exceeded the T3 rating for inductive coupling, and that between May 15, 2010 and May 14, 2011, either at least one-third of the handset models they offered, or at least seven handset models, met or exceeded the T3 rating for inductive coupling).

<sup>19</sup> We note that while non-hearing aid-compatible handsets are technically available to all consumers, these handsets may not function effectively with hearing aids and can create excessive feedback and “noise.” See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16756 ¶ 6 (“[D]igital wireless phones can cause interference to hearing aids and cochlear implants because of electromagnetic energy emitted by the phone’s antenna, backlight, or other components. This interference can be significant enough to prevent individuals with hearing aids or cochlear implants from using digital wireless phones and services. In addition, most wireless phones do not internally provide the capability to inductively couple with hearing aids containing telecoils, as wireline phones do.”).

<sup>20</sup> See Appendix, Metropolitan Telecommunications Holding Company d.b.a. MetTel, Hearing-Aid Compatible Handset Model Offerings, WCDMA and GSM Air Interfaces (T3 or higher rating) (indicating that between January 1, 2010 and December 31, 2010, Metropolitan offered five handset models that operate on the WCDMA air interface, only one of which met or exceeded the T3 rating).

Metropolitan apparently willfully<sup>21</sup> and repeatedly<sup>22</sup> violated section 20.19(d)(3)(ii) of the Rules by failing to offer to consumers the required number or percentage of digital wireless handset models with a minimum T3 rating that operate on the WCDMA air interface. We further find that this apparent misconduct continued for the entire 2010 calendar year.

6. With respect to handsets that operate on the GSM air interface, Metropolitan was required to offer at least *two* handset models with a minimum T3 rating between January 1, 2010 and December 31, 2010.<sup>23</sup> As set forth in greater detail in the Appendix, Metropolitan also apparently failed to meet this standard, offering only one handset model with a minimum T3 rating that operates on the GSM air interface.<sup>24</sup> Accordingly, we find that Metropolitan apparently willfully and repeatedly violated section 20.19(d)(3)(ii) of the Rules by failing to offer to consumers the required number or percentage of digital wireless handset models with a minimum T3 rating that operate on the GSM interface. We further find that this apparent misconduct continued for the entire 2010 calendar year.

### **B. Proposed Forfeiture**

7. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>25</sup> To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability for forfeiture and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>26</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission rule.<sup>27</sup> We conclude under this standard that Metropolitan is apparently liable for a forfeiture for its apparent willful and repeated violations of section 20.19(d)(3)(ii) of the Rules.

8. Section 503(b)(2)(B) of the Act authorizes a forfeiture assessment against a common carrier up to \$150,000 for each violation, or for each day of a continuing violation, up to a maximum of \$1,500,000 for a single act or failure to act.<sup>28</sup> In exercising such authority, we are required to take into

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<sup>21</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of section 312 clarifies that this definition of willful applies to both sections 312 and 503 of the Act, H.R. Conf. Rep. No. 97-765 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”); *see also Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 ¶ 12 (2008); *San Jose Navigation, Inc.*, Forfeiture Order, 22 FCC Rcd 1040, 1042 ¶ 9 (2007), *consent decree ordered*, Order and Consent Decree, 25 FCC Rcd 1494 (2010).

<sup>22</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to section 503(b) of the Act, provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 ¶ 9 (2001), *forfeiture ordered*, Forfeiture Order, 17 FCC Rcd 22626 (2002) (forfeiture paid); *Southern California*, 6 FCC Rcd at 4388 ¶ 5.

<sup>23</sup> *See* 47 C.F.R. § 20.19(d)(3)(ii).

<sup>24</sup> *See* Appendix (indicating that between January 1, 2010 and December 31, 2010, Metropolitan offered five handset models that operate on the GSM air interface, only one of which met or exceeded the T3 rating).

<sup>25</sup> 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

<sup>26</sup> 47 U.S.C. § 503(b)(4); 47 C.F.R. § 1.80(f).

<sup>27</sup> *See, e.g., SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 ¶ 4 (2002).

<sup>28</sup> 47 U.S.C. § 503(b)(2)(B). The Commission has amended section 1.80(b)(2) of the Rules, 47 C.F.R. § 1.80(b)(2), three times to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements

account “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”<sup>29</sup>

9. The Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules do not establish a base forfeiture amount for violations of the hearing aid-compatible handset requirements set forth in section 20.19 of the Rules.<sup>30</sup> The fact that the *Forfeiture Policy Statement* does not specify a base amount in no way suggests that a forfeiture should not be imposed. The *Forfeiture Policy Statement* states that “any omission of a specific rule violation from the ... [forfeiture guidelines] ... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant.”<sup>31</sup> The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case-by-case basis, under its general forfeiture authority contained in section 503 of the Act.<sup>32</sup>

10. In determining the appropriate forfeiture amount for violation of the hearing aid-compatible handset deployment requirements, we take into account that these requirements serve to ensure that consumers with hearing loss have access to advanced telecommunications services. In adopting the hearing aid compatibility rules, the Commission underscored the strong and immediate need for such access, stressing that individuals with hearing loss should not be denied the public safety and convenience benefits of digital wireless telephony.<sup>33</sup> Moreover, as the Commission has noted, the demand for hearing aid-compatible handsets is likely to increase with the public’s growing reliance on wireless technology and with the increasing median age of our population.<sup>34</sup>

11. We have previously determined that violations of the hearing aid-compatible handset deployment requirements are serious in nature because failure to make compatible handsets available to consumers actually prevents hearing aid users from accessing digital wireless communications.<sup>35</sup>

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contained in the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note. The most recent inflation adjustment took effect September 2, 2008 and applies to violations that occur after that date. *See Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845, 9847 (2008) (adjusting the maximum statutory amounts for common carriers from \$130,000/\$1,325,000 to \$150,000/\$1,500,000); 73 Fed. Reg. 44663-5.

<sup>29</sup> 47 U.S.C. § 503(b)(2)(E). *See also* 47 C.F.R. § 1.80(b)(5), Note to paragraph (b)(5): Section II. Adjustment Criteria for Section 503 Forfeitures.

<sup>30</sup> *See The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”); 47 C.F.R. §§ 1.80, 20.19.

<sup>31</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099 ¶ 22.

<sup>32</sup> *Id.*

<sup>33</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16755 ¶ 4.

<sup>34</sup> *Id.* at 16756 ¶ 5 (noting that approximately one in ten Americans, or 28 million Americans, have some level of hearing loss, that the proportion increases with age, and that the number of those affected will likely grow as the median age increases). *See also Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephone*, Report on the Status of Implementation of the Commission’s Hearing Aid Compatibility Requirements, 22 FCC Rcd 17709, 17719 ¶ 20 (2007) (noting, just four years later, that the number of individuals with hearing loss in the United States was “at an all time high of 31 million people – with that number expected to reach approximately 40 million people at the end of [2010]”).

<sup>35</sup> *See South Canaan Cellular Communications Company, L.P.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 20, 24 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008) (forfeiture paid) (“*South Canaan*”) (finding that “a violation of the labeling requirements, while serious because it deprives hearing aid users from making informed choices, is less egregious than a violation of the handset requirements because failure to make compliant handsets available actually

Accordingly, we generally apply a base forfeiture amount of \$15,000 to reflect the gravity of these violations.<sup>36</sup> We have applied the \$15,000 base forfeiture on a per handset model basis (*i.e.*, for each handset model below the minimum number of hearing aid-compatible models required by the Rules).<sup>37</sup> We also impose separate base forfeitures for each air interface over which the service provider offers service.<sup>38</sup>

12. For purposes of calculating the base forfeiture amount for Metropolitan's apparent T3-related violations on the WCDMA air interface, we focus on the company's failure to offer to consumers the requisite number or percentage of handset models with a minimum T3 rating in December 2010, when Metropolitan missed the benchmark by one handset model.<sup>39</sup> Accordingly, and consistent with section 503(b)(6) of the Act, we start with a base forfeiture of \$15,000 for Metropolitan's apparent failure to offer to consumers the required number or percentage of handset models with a minimum T3 rating that operate on the WCDMA air interface in willful and repeated violation of section 20.19(d)(3)(ii) of the Rules.

13. Similarly, the record establishes that Metropolitan apparently failed in December 2010 to offer to consumers the requisite number or percentage of handset models with a minimum T3 rating that operate on the GSM air interface.<sup>40</sup> Accordingly, and consistent with section 503(b)(6) of the Act, we assess a base forfeiture of \$15,000 for Metropolitan's apparent failure to offer to consumers the required number or percentage of handset models with a minimum T3 rating that operate on the GSM air interface in willful and repeated violation of section 20.19(d)(3)(ii) of the Rules.

14. These base forfeiture amounts, however, are subject to adjustment. Given the totality of the circumstances, and consistent with the *Forfeiture Policy Statement*, we conclude that an upward adjustment of the \$30,000 base forfeiture amount is warranted. In this regard, we take into account that Metropolitan was out of compliance with the hearing aid-compatible handset deployment requirements for the entire 2010 calendar year.<sup>41</sup> In addition, as the Commission made clear in the *Forfeiture Policy*

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deprives hearing aid users from accessing digital wireless communications.”). *See also, e.g., NEP Cellcorp, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 8, 13 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009) (forfeiture paid) (“*NEP Cellcorp*”); *Pinpoint Wireless, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9290, 9295 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2008), *consent decree ordered*, Order and Consent Decree, 24 FCC Rcd 2951 (Enf. Bur., Spectrum Enf. Div. 2009) (“*Pinpoint Wireless*”); *Smith Bagley, Inc.*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14113, 14118 ¶ 11 (Enf. Bur., Spectrum Enf. Div. 2009), *response pending* (“*Smith Bagley*”).

<sup>36</sup> *See, e.g., NEP Cellcorp*, 24 FCC Rcd at 13 ¶ 11; *Pinpoint Wireless*, 23 FCC Rcd at 9295 ¶ 11; *Smith Bagley*, 24 FCC Rcd at 14118 ¶ 11; *South Canaan*, 23 FCC Rcd at 24 ¶ 11.

<sup>37</sup> *See supra* note 36.

<sup>38</sup> *See supra* note 6.

<sup>39</sup> *See supra* para. 5.

<sup>40</sup> *See supra* para. 6.

<sup>41</sup> *See* 47 C.F.R. § 1.80(b)(5), Note to Paragraph (b)(5): Section II. Adjustment Criteria for Section 503 Forfeitures (establishing “repeated or continuous violation” as an upward adjustment factor). While section 503(b)(6) of the Act bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of a notice of apparent liability for forfeiture, we may consider the fact that Metropolitan's misconduct occurred over an extended period to place “the violations in context, thus establishing the licensee's degree of culpability and the continuing nature of the violations.” *See Roadrunner Transportation Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 ¶ 8 (2000); *BASF Corporation*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 17300, 17302 n.24 (Enf. Bur., Spectrum Enf. Div. 2010); *Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 74, 76 n.23 (Enf. Bur., Spectrum Enf. Div. 2011). The forfeiture amount we propose herein relates only to Metropolitan's apparent violations that have occurred within the past year.

*Statement*, large or highly profitable entities, such as Metropolitan, should expect forfeitures higher than those reflected in the base amounts.<sup>42</sup> Therefore, based on all the factors and evidence, including the duration of the violation, Metropolitan's ability to pay the proposed forfeiture,<sup>43</sup> and the potentially significant impact on consumers with hearing loss, we propose a forfeiture of \$48,000 against Metropolitan for apparently willfully and repeatedly failing to comply with the hearing aid-compatible handset deployment requirements set forth in sections 20.19(d)(3)(ii) of the Rules.<sup>44</sup>

#### IV. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act, and sections 0.111, 0.311, and 1.80 of the Rules,<sup>45</sup> Metropolitan Telecommunications Holding Company d.b.a. MetTel **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of forty-eight thousand dollars (\$48,000) for apparent willful and repeated violations of section 20.19(d)(3)(ii) of the Rules.<sup>46</sup>

16. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules,<sup>47</sup> within thirty (30) calendar days after the release date of this *Notice of Apparent Liability for Forfeiture*, Metropolitan Telecommunications Holding Company d.b.a. MetTel **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payment by credit card, an FCC Form 159

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<sup>42</sup> Specifically, the Commission stated:

[W]e recognize that for large or highly profitable communication entities, the base forfeiture amounts ... are generally low. In this regard, we are mindful that, as Congress has stated, for a forfeiture to be an effective deterrent against these entities, the forfeiture must be issued at a high level. For this reason, we caution all entities and individuals that, independent from the uniform base forfeiture amounts ..., we intend to take into account the subsequent violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business. Such large or highly profitable entities should expect in this regard that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount.

*Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100 ¶ 24.

<sup>43</sup> See, e.g., Metropolitan Telecommunications Holding Company, [www.Manta.com/c/mm0r360/metropolitan-telecommunications-holding-company](http://www.Manta.com/c/mm0r360/metropolitan-telecommunications-holding-company) (estimating Metropolitan's annual revenue to be \$126,929,115) (as of December 13, 2011).

<sup>44</sup> 47 C.F.R. § 20.19(d)(3)(ii).

<sup>45</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>46</sup> 47 C.F.R. § 20.19(d)(3)(ii).

<sup>47</sup> 47 C.F.R. § 1.80.

(Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account Number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or e-mail ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Metropolitan Telecommunications Holding Company d.b.a. MetTel must also send electronic notification to Nissa Laughner at Nissa.Laughner@fcc.gov, Pamera Hairston at Pamera.Hairston@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

18. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules.<sup>48</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. This statement also must also be emailed to Nissa Laughner at Nissa.Laughner@fcc.gov and to Pamera Hairston at Pamera.Hairston@fcc.gov.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Joseph Farano, Corporate Counsel, Metropolitan Telecommunications Holding Company d.b.a. MetTel, 55 Water Street, 31<sup>st</sup> Floor, New York, NY 10041 and to Michael P. Donahue, Counsel for Metropolitan Telecommunications Holding Company d.b.a. MetTel, Helein & Marshlian, LLC, 1420 Spring Hill Road, Suite 205, McLean, VA 22102.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison  
Chief  
Enforcement Bureau

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<sup>48</sup> 47 C.F.R. §§ 1.80(f)(3), 1.16.

**APPENDIX**  
**Metropolitan Telecommunications Holding Company d.b.a. MetTel**  
**Hearing Aid-Compatible Handset Model Offerings**  
**WCDMA and GSM Air Interfaces**  
**(T3 or higher rating)**

Period	Total Handset Models Offered	T3-rated Handset Models Offered	T3-rated Handset Models Required	T3 Compliance?
January 2010	5	1	<b>At least 1/3 of the total number of handset models offered or at least 5 handset models</b> (1/1/10-5/14/10)	No
February 2010	5	1		No
March 2010	5	1		No
April 2010	5	1		No
May 1-14, 2010	5	1		No
May 15-31, 2010	5	1	<b>At least 1/3 of the total number of handset models offered or at least 7 handset models</b> (5/15/10-12/31/10)	No
June 2010	5	1		No
July 2010	5	1		No
August 2010	5	1		No
September 2010	5	1		No
October 2010	5	1		No
November 2010	5	1		No
December 2010	5	1	No	